

**Before the State of South Carolina  
Department of Insurance**

In the Matter of:

**Employers Life Insurance Corporation,**

961 East Main Street  
Spartanburg, South Carolina 29302.

**Order Declaring Insurer Impaired  
and Triggering Protection of the  
South Carolina Life and Accident  
and Health Insurance Guaranty  
Association**

The South Carolina Department of Insurance brings this matter before me upon review of the business affairs and operations of insurer Employers Life Insurance Corporation (ELIC).

It is the Department's opinion that the insurer is impaired and its continued operation is hazardous to the public and its policyholders.

**FINDINGS OF FACT**

1. ELIC is a South Carolina domestic insurance company that holds a certificate of authority under the provisions of § 38-5-10 of the South Carolina Code. The Department granted ELIC a license to transact business as an insurance company with Life and Accident and Health authority on October 5, 2000. Its stock is not publicly traded.
2. ELIC's December 31, 2004 Annual Statement shows that it is licensed to transact business in five states (Alabama, Arkansas, Florida, Georgia, and South Carolina), but that it writes business only in Florida, Georgia, and South Carolina. It has active policies for life, accident, health, and stop loss insurance as well as an active Specific and Aggregate Medical Excess Loss Quota Share Reinsurance Agreement with Fidelity Security Life Insurance Company. The results of an examination conducted by the Department indicated that ELIC's stated surplus and capital was a negative <\$831,921> as of December 31, 2004.
3. On or about March 1, 2005, ELIC filed its Annual Statement with the Department. On March 2, 2005 Tim Campbell, Chief Financial Analyst for the Department, requested ELIC to submit a plan to the Department by March 8, 2005 indicating how it planned to address the financial condition of the company. The Department took regulatory action to preserve the assets of the insurer. The South Carolina Life and Accident and Health Insurance Guaranty Association ("the Association") was notified of the Department's concerns about the financial condition of the insurer.
4. On or about April 27, 2005, ELIC provided the Department with a preliminary statutory financial statement that showed total capital and surplus in the amount of

<\$534, 519> as of March 31, 2005. The financial statement included a liability of \$4,889,666. An actuarial review performed by the Department's independent actuaries as of March 31, 2005 determined ELIC's liability for health and dental services to be \$7,400,000 or approximately \$2,500,000 greater than the liability established by ELIC. Based upon this actuarial review, ELIC's total capital and surplus as of March 31, 2005 was <\$3,000,000> rather than <\$534,519>.

5. Section 38-9-10(1) of the South Carolina Code requires the respondent to maintain stated capital of \$1,500,000 and surplus of not less than \$300,000.
6. On or about April 29, 2005, the Department filed a petition to have ELIC declared insolvent and its assets liquidated. ELIC does not dispute its financial condition; however, on or about June 27, 2005 ELIC filed its Response to Petition and Counterclaim for Declaratory Judgment requesting that the Court not declare the insurer insolvent and dissolve its corporate existence until it addressed the ownership of trust accounts established for the purpose of paying assumed stop loss claims. No hearing has been set on this matter.
7. ELIC has approximately \$700,000 in cash and over \$ 1,000,000 in known outstanding covered claims. This does not include unreported claims.
8. The Association guarantees claims covered under the provisions of S.C. Code Ann. § 38-29-40.

### **CONCLUSIONS OF LAW**

After a thorough review of the matter, given the status of ELIC's business operations and ELIC's impaired status, I hereby conclude the following as a matter of law:

1. The South Carolina Department of Insurance has jurisdiction over ELIC and this matter.
2. The Association is the mechanism established to protect policy owners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, accident and health insurance policies, annuity contracts, and supplemental contracts against failure in the performance of contractual obligations due to the impairment of the insurer issuing these policies or contracts.
3. ELIC is financially impaired and in a hazardous financial condition. It is unable or potentially unable to fulfill its contractual obligations.
4. S.C. Code Ann. § 38-29-70 provides that:
  - (1) if a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the

impaired insurer and approved by the impaired insurer and the director or his designee:

- a. Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured all of the covered policies of the impaired insurer.
  - b. Provide monies, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) of this item (1) and assure payment of the impaired insurer's contractual obligations pending action under paragraph (a) of this item (1).
  - c. Loan money to the impaired insurer.
5. ELIC is impaired as that term is defined by § 38-29-20(b) of the South Carolina Code of Laws.
  6. The Association has the authority to step in and pay covered claims pending an order of liquidation from the circuit courts of this state. This action is necessary to protect protect policy owners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, accident and health insurance policies, annuity contracts, and supplemental contracts against failure in the performance of contractual obligations due to the impairment of the insurer issuing these policies or contracts.

## **ORDER**

IT IS HEREBY ORDERED that the Association pay covered claims, guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured all of the covered policies of the impaired insurer; provide monies, pledges, notes, guarantees, or other means as are proper to effectuate the provisions of § 38-29-70 and assure payment of the impaired insurer's contractual obligations under said section including loaning money to the impaired insurer; or taking any other action necessary and permitted under this section to protect the policyholders of this state.

IT IS FURTHER ORDERED that this Order does not supersede or replace previous regulatory orders issued by this Department. Nothing contained within this Order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this Order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this Order should be construed to limit the duty of the Director, pursuant to S.C. Code Ann. § 38-3-110 (3) (2004), exercised either directly or through her designee, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report." Nothing contained within this Order should be construed to limit the ability of the Director to impose further action against ELIC, including placing them into conservation, rehabilitation, liquidation, or other delinquency proceedings, during the period

conservation, rehabilitation, liquidation, or other delinquency proceedings, during the period of administrative supervision or, as the Director believes, in her sole discretion, circumstances warrant. See S.C. Code Ann. § 38-26-80 (2004).

IT IS FURTHER ORDERED that should it ever be determined by the Department that ELIC is no longer an impaired insurer, that prior to the issuance of any approval by the Department authorizing ELIC to transact the business of insurance again, ELIC shall repay in full to the Association all expenses, claims and other monies paid by the Association on behalf of ELIC during the course of its impairment.

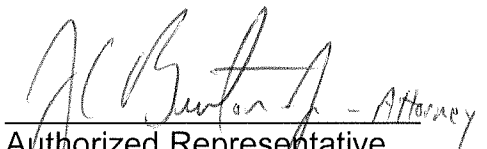
This Order becomes effective on the date of my signature below.

AND IT IS SO ORDERED.

  
Eleanor Kitzman  
Director

July 12, 2005  
Columbia, South Carolina

WE CONSENT:

  
Authorized Representative  
South Carolina Life and Accident and Health  
Insurance Guaranty Association